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Medical Confidentiality, Privileged Communication and Professional Secrecy

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Abstract : *Medical confidentiality, privileged communication and professional secrecy are essential principles in medical ethics and law that protect the privacy, dignity and rights of patients. These principles impose a legal and ethical duty on medical professionals, including doctors, nurses and other healthcare providers, to protect patients' personal information, medical records, diagnosis, treatment details and other sensitive information obtained during professional practice. Medical confidentiality ensures that information shared by patients with healthcare professionals is not disclosed to unauthorized persons without the patient's consent, except in circumstances permitted or required by law. Privileged communication refers to the protection given to certain confidential communications between a patient and a medical professional, particularly where disclosure may affect the patient's privacy and legal interests. Professional secrecy further strengthens this obligation by requiring healthcare professionals to maintain confidentiality even after the completion of treatment or termination of the professional relationship. However, this duty is not absolute, as disclosure may be justified in situations involving court orders, public health emergencies, prevention of serious harm or statutory obligations. This study aims to examine the legal framework, ethical principles, judicial interpretations and exceptions relating to medical confidentiality, privileged communication and professional secrecy, particularly in the Indian legal system. It also highlights the challenges arising from digital medical records, data protection and unauthorized disclosure of sensitive health information. The study emphasizes the importance of balancing patient privacy with public interest and legal responsibilities to ensure trust, accountability and ethical standards in the healthcare profession.*

Keywords: Medical Confidentiality, Privileged Communication, Professional Secrecy, Patient Privacy, Medical Ethics, Healthcare Law, Right to Privacy

I. INTRODUCTION

Medical confidentiality, privileged communication and professional secrecy are fundamental concepts in medical ethics and law that play an important role in protecting the privacy, dignity and fundamental rights of patients. The relationship between a doctor and a patient is based on trust, confidence and mutual respect. Patients often share highly personal and sensitive information with medical professionals, including their medical history, physical and mental health conditions, diagnosis, treatment details and other private matters. Therefore, it is the ethical and legal responsibility of healthcare professionals to protect such information from unauthorized access, use or disclosure.[1] In India, the importance of medical confidentiality is closely connected with the fundamental right to privacy guaranteed under Article 21 of the Constitution of India. The Supreme Court, in Justice K.S. Puttaswamy v. Union of India (2017), recognized privacy as a fundamental right, including the protection of personal information. Medical confidentiality is

[1] World Medical Association, International Code of Medical Ethics (2022).

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also supported by professional ethical standards governing registered medical practitioners and applicable data protection laws. However, the duty to maintain confidentiality is not absolute. Medical information may be disclosed in certain exceptional circumstances, such as when required by a court of law, when necessary to protect public health, when there is a serious risk of harm to others, or when disclosure is authorized or required by applicable legislation. [2]In the modern healthcare system, technological developments, electronic health records, online consultations and digital storage of medical information have created new challenges in maintaining patient confidentiality. Unauthorized access, data breaches and misuse of sensitive medical information may seriously affect the privacy and dignity of patients. Therefore, medical confidentiality, privileged communication and professional secrecy are essential for maintaining public trust in the healthcare system. This study examines their meaning, legal framework, ethical importance, judicial interpretations, exceptions and challenges in India, with particular emphasis on balancing the privacy rights of patients with the legal and professional responsibilities of medical practitioners.

II. MEDICAL CONFIDENTIALITY

Medical confidentiality is the ethical and professional duty of a doctor to keep information obtained from a patient confidential and not disclose it to unauthorized persons without the patient's consent. Cornerstone of trust between doctor and patient Obligation for doctors to not disclose information, passed from patient.

Definition :“ When a patient discloses information to their Doctor ,the doctor pledges not to disclose this information to a third party in the future”.[3]

Medical confidentiality is one of the fundamental principles of medical ethics and healthcare law. It refers to the legal and ethical duty of doctors, nurses and other healthcare professionals to protect the personal and medical information of patients from unauthorized access, use or disclosure.[4]

During medical consultations, patients share sensitive information such as their medical history, diagnosis, mental health conditions, treatment details, test reports and personal circumstances. Healthcare professionals are responsible for ensuring that such information remains confidential and is not disclosed to third parties without the patient's consent, except where disclosure is permitted or required by law.

Medical confidentiality is essential for maintaining trust between doctors and patients. It encourages patients to disclose accurate information about their health, which helps doctors provide appropriate diagnosis and treatment.[5]

Importance of Medical Confidentiality:

Autonomy: Every patient has the right to make decisions regarding their personal information and medical treatment.

Implied promise: Patient assumes Doctors will maintain their confidentiality

Virtue Ethics: Patient assumes virtuous doctor would not breech confidentiality[6]

Consequentialist: Breaching confidentiality would result in loss of patient trust.

Five C’s of confidentiality:

Consent: A clinician may release confidential information with the consent of the patient or a legally authorized surrogate decision maker, such as a parent, guardian, or other surrogate designated by an advance medical directive.

Court Order: A clinician may release confidential information upon the receipt of an order by a court of competent jurisdiction.

Continued Treatment: A clinician may release confidential information necessary for the continued treatment of a patient.

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[2] Justice K.S. Putta swamy (Retd.) v. Union of India, (2017) 10 SCC 1.

[3] National Medical Commission, Code of Medical Ethics Regulations, 2002, Regulation 7.14.

[4] Mr. 'X' v. Hospital 'Z', (1998) 8 SCC 296

[5] American Medical Association, Code of Medical Ethics, Opinion 3.2.1, Confidentiality.

[6] Tom L. Beauchamp and James F. Childress, Principles of Biomedical Ethics, 8th ed. (Oxford University Press, 2019).

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Comply with the Law: A clinician may reveal confidential information in order to comply with mandatory reporting statutes (e.g., child abuse), law enforcement or administrative agency investigations, business operations, and other such lawful purposes.[7]

Communicate a Threat—This is the well known Tarasoff exception to confidentiality that involves the clinician's duty to protect others from violence by a patient. The Tarasoff exception exists in a variety of forms in many jurisdictions.[8]

Exceptions to Medical Confidentiality:

Court Order:

When a competent court directs a doctor or hospital to disclose medical information or produce medical records, the healthcare professional must comply with the lawful order.

Public Health Protection:

Medical information may be disclosed to the concerned public health authorities when reporting is required for the prevention and control of communicable or notifiable diseases.[9]

Serious Risk of Harm:

A doctor may disclose confidential information when there is a serious and identified risk to a specific person or community.

Patient's Consent:

Medical information may be shared with another person or organization when the patient gives informed and voluntary consent.

Medical Emergency:

During an emergency, relevant medical information may be shared with healthcare professionals when necessary to save the patient's life or provide urgent treatment.

Protection of Children:

Disclosure may be required under child protection laws when circumstances trigger mandatory reporting obligations.

Prevention of Threat to Life:

Medical information may be disclosed when necessary to prevent a serious threat to life, subject to applicable legal provisions.

Medical Research:

Patient information may be used for medical research and educational purposes subject to applicable consent, ethical approval and privacy safeguards.

III. PRIVILEGED COMMUNICATION

Privileged communication refers to confidential information communicated within a legally recognised relationship or under circumstances in which the law protects the communication from disclosure, subject to applicable exceptions.

Privileged communication is a Bonafide statement made by a doctor in a good faith, to proper authority or person having corresponding interest, in discharge of his legal, social or moral duty, for the protection of the patient, public or the state.

Definition:

(a) It is a statement made Bonafide upon any subject matter by a doctor to the concerned authority, due to his duty to protect the interests of the community or of the State. (b) Divulgence of information about patient's illness to concerned

[7]Protection of Children from Sexual Offences Act, 2012, s. 19

[8] Tarasoff v. Regents of the University of California, 17 Cal. 3d 425, 551 P.2d 334 (1976).

[9] Epidemic Diseases Act, 1897, s. 2.

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authorities by the doctor in the interest of community or state under moral or social or legal obligation is known as privileged communication.

Salient features :

(a) To be privileged, the communication must be made to a person having interest in it, or in reference of which he has a duty.[10]

(b) If made to more than one person, or to a person who has not a direct interest in it, the plea of privilege fails.

(c) The doctor should first persuade the patient to obtain his consent before notifying the proper authority.[11]

(d) If the doctor discloses professional secrets for the purpose of protecting the interest of the community, (under a moral and social obligation), he will not be liable to damages.

Situations where privileged communication holds:

In society's interest :(a) About venereal disease of patient to swimming pool manager, when patient tries to enter swimming pool against the advice of not entering swimming pool which can cause infection to others. (b) About colour blindness of patient to road transport authority, when patient is driving motor-vehicle against the doctor's advice of not driving as it can cause accident.

In patient's interest: Doctor can inform the parent's of psychiatric patient to keep watch over him as he has suicidal tendencies. This is privileged communication [patient cannot sue the doctor][12]

In a third party's interest: Doctor can inform a third party person about the illness like HIV or Syphilis (until cured) of patient when they are about to marry. Patient cannot succeed against doctor for breach of confidentiality. Doctor can inform the spouse (third party) about illness like HIV or Syphilis of the patient.

In Doctor's own interest: Doctor informing court about the illness of patient as evidence is privileged communication, when patient brings civil criminal suit against doctor.[13]

Negligence Suits: When a physician is employed by the opposite party to examine a patient who has filed a suit for negligence, the information thus acquired is not privileged (no physician-patient relationship), and the doctor may testify to such information.

In Court of law:(a) In a Court of law, a doctor cannot claim privilege concerning the facts about the illness of his patient, it it is relevant to the inquiry before the Court

(b) The doctor should appeal to the Court if he is asked to reveal any professional secret. If the Court does not accept this plea, he may request the Court that he may be allowed to give the answer in writing so that the public may not know.

(c) If this is denied by the Court, the doctor has to answer the questions about the patient's confidential matters to avoid risk of penalties for contempt of Court

(d) in all cases, the doctor should appeal to the Judge before disclosing a professional secret. The witness should not voluntarily disclose information either in Court or out of it, but for the actual evidence demanded by the Court, he is protected from civil action against breach of confidence.

(e) Under S. 126, and 129, I.EA., a lawyer can claim privilege in a Court of law with regard to any communication made to him by his client[14]

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[10]Bharatiya Nyaya Sanhita, 2023, Section 356, Exception 8

[11] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Regulation 7.14

[12] Ibid., Regulation 7.14(ii)

[13] The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, § 8(2)(c)

[14] Indian Evidence Act, 1872, §§ 126 and 129

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Notifiable disease: if during his practice, a doctor comes across a patient who is sullenng from a Notifiable disease, it is his duty to inform concerned authorities. A medical practitioner has a statutory duty to notify births, deaths, infectious diseases, etc., to the Public Health authorities.[15]

Suspected Crime: (a) Every person, aware of the commission of, or of the intention of any other person to commit any offence shall immediately give information to the nearest Magistrate or police officer of such commission or intention (S.39, Cr.P.C.).

(b) If the doctor learns of a serious crime, such as murder, assault, rape, etc. by treating the victim or assailant, he is bound to give information to the police.

(c) Thus, if a doctor treats a person suffering from gunshot or stab wounds due to criminal assault, he must inform the police as it is a medicolegal case[16]

In the interest of Employers:If the person being examined is found to be suffering from a disease which can put the life of the people he is serving in danger, the doctor must try to persuade the person to not join his duly. If he does not agree, then the employer has to be informed.

(a) Waiter or cook- condition of patient found to be suffering from an infectious disease must be reported to employer.

(b) Driver Information about driver's illness like epilepsy, alcoholism, drug addiction, high blood pressure, colour blindness, must be reported to state transport authorities.

(c) leacher-Information about infectious disease (eg tuberculosis) condition of teacher, must be reported to the employer.

Medical for Insurance: if a doctor examines a person for his insurance policy, the person knows that any adverse medical findings would be communicated to the insurance company. He has thus given his tact consent for communication of medical findings to the insurance company. In such a situation, the doctor can give all the findings to the insurance company.[17]

Waiver of professional secrecy: When a patient gives his express permission to the doctor to disclose professional secrets.

Conditions to be Privileged:

The communication must be made to a person/authority who has a duty to receive it.

If it is made to more than one person or to someone with no direct interest ,the plea of privilege fails[18]

It must be made without malice, and only with the intention of protecting the community or state.

IV. PROFESSIONAL SECRECY

Professional secrecy is the ethical and professional obligation of a person in a specialized occupation to preserve information acquired through professional duties.

In medicine, it extends to information learned by doctors, nurses and other authorized healthcare personnel in the course of patient care. It is also called as Professional confidentiality[19]

To maintain good doctor-patient relationship it is the duty and responsibility of the doctor to keep all that information secret

Patient shares everything regarding his/her illness:

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[15]Ministry of Health and Family Welfare, Government of India, Integrated Disease Surveillance Programme (IDSP)

[16] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 33

[17] The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, § 8(1)(ii)

[18] K.S. Narayan Reddy, The Essentials of Forensic Medicine and Toxicology, chapter on Medical Law and Ethics, section on Privileged Communication.

[19] Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Regulations 2.2 and 7.14

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Personal matter
Clinical symptoms
Investigation reports
Diagnosis reports
Treatment
Which he/she may not share with others
On the other hand ,a doctor needs all such information for correct diagnosis and proper treatment.
So all relevant information automatically becomes secret or confidential between doctor and patient

Importance of Professional Secrecy:

Beneficence-Whatever is done or said is for the patient's good.[20]
Autonomy-Respect for the person and his or her right to self-determination.
Nonmaleficence-Whatever is done or said will do the patient no harm.
Justice-Equitable allocation of healthcare resources according to need ,notwealth ,class creed or colour.

Situations where secrecy should maintained

Major patient:

More than 18 years of age[21]
Not to disclose any information about patients illness to even parents and relatives without patient's consent.
Even if parents or relatives are paying doctors fees.
Only if patient consents then the information can be disclosed.
In case of a minor-The information maybe disclosed to the guardian, No need of consent.[22]

Husband and wife:

A doctor should not disclose
1. the nature of illness detected in husband to his wife and vice versa without consent
2. Information regarding pregnancy, abortion or venereal disease of the women to her husband without her consent.
Doctor can disclose only if the illness is of infectious nature and affect the
In divorce and nullity cases no information shall be disclosed, without consent of concerned person.
However, if any condition on basis of which divorce and nullity of marriage maybe granted.
1. unsoundness of mind
2. impotence
3. Venereal disease
4. leprosy
such condition may be disclosed to the concerned third party

Artificial insemination:

Identify of donor and recipients should be kept secret[23]

Case report:

While reporting a case in any Medical journal, the Identity, name or photograph of the patient must be kept confidential however it can be disclosed with his consent

Postmortem findings:

The report should be given to the police only

[20] Basil Varkey, "Principles of Clinical Ethics and Their Application to Practice," Medical Principles and Practice, Vol. 30 (2021), pp. 17–28.
[21] Indian Majority Act, 1875, § 3
[22] The Juvenile Justice (Care and Protection of Children) Act, 2015, § 2(31)
[23] Transplantation of Human Organs and Tissues Rules, 2014, Rule 23(4)

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Can disclose relevant facts e.g. pregnancy discovered at autopsy of unmarried girl only to the relatives, not to any other person

V. LEGAL FRAMEWORK IN INDIA

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002:

Regulation 2.2 — Patience, delicacy and secrecy: Requires doctors to preserve confidences concerning patients' personal and domestic lives, unless disclosure is required by law, with particular consideration of duties to protect others from communicable disease.

Regulation 7.14 — Disclosure of secrets: Provides that doctors must not disclose secrets learned in professional practice except in specified circumstances, including a court order, a serious and identified risk to a specific person or community, and legally required reporting of notifiable diseases.

Regulation 1.3.2 — Medical records: Addresses requests for medical records from patients, authorised attendants and legal authorities, including the prescribed response period.

Mental Healthcare Act, 2017

Section 23: Recognises the right to confidentiality of persons with mental illness, including information relating to mental health, treatment and healthcare.[24]

The right is subject to the exceptions and conditions prescribed by the Act.

National Medical Commission Act, 2019

Section 27: Provides for the Ethics and Medical Registration Board and its functions under the statutory framework.[25]

Section 30: Addresses the professional conduct and disciplinary jurisdiction of State Medical Councils, subject to the statutory framework.

These provisions are relevant to the regulatory supervision of medical practitioners and professional misconduct proceedings. They should be read with the applicable medical ethics regulations.

HIV and AIDS (Prevention and Control) Act, 2017

Section 8: Protects confidentiality concerning HIV-related information.[26]

Section 11: Provides for disclosure in specified circumstances, subject to statutory conditions.

These provisions are especially important in preventing discrimination and protecting the privacy of persons living with HIV.

VI. CASE LAWS RELATED TO MEDICAL COFIDENTIALITY, PRIVILEGED COMMUNICATION AND PROFESSIONAL SECRECY

MR.X V .HOSPITAL Z (1998)

Fact of the case:Mr. X was diagnosed as HIV-positive during a medical examination at Hospital Z before his proposed marriage. The hospital disclosed his HIV status to his prospective bride's family to protect her from the risk of infection. As a result, the marriage was cancelled, and Mr. X claimed that his medical confidentiality and right to privacy had been violated.

Issue of the case:Whether a hospital or doctor can disclose a patient's confidential medical information without consent, and whether protecting another person's life and health can justify violating the patient's right to privacy under Article 21 of the Indian Constitution.

Judgement:The Supreme Court dismissed Mr. X's appeal and held that medical confidentiality is not absolute. [27]The hospital was justified in disclosing his HIV-positive status because it was necessary to protect the health and life of his

[24] The Mental Healthcare Act, 2017, No. 10 of 2017, § 23(1)

[25] The National Medical Commission Act, 2019, No. 30 of 2019, § 27(1)(a)–(d)

[26] The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, No. 16 of 2017, § 8(1)–(2)

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prospective bride. The Court recognised that the right to privacy must be balanced against the protection of another person's life.

AMRUTHA V. DR. DEEPA NAIR (2024)

Fact of the case:Amrutha was treated by Dr. Deepa Nair, a psychiatrist, during December 2020 and January 2021. The doctor issued a medical certificate to Amrutha's husband stating that she was suffering from depression disorder with psychotic features, without obtaining her consent. The certificate was allegedly used in their matrimonial dispute. Amrutha filed a consumer complaint claiming that the doctor had violated her medical confidentiality.

Issue of the case:Whether a doctor can disclose a patient's confidential medical information to another person without the patient's consent, and whether issuing such a medical certificate amounts to a violation of professional medical ethics and deficiency in service.

Judgement:The Kerala State Consumer Disputes Redressal Commission held that the doctor had violated the duty of confidentiality under the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. It held that issuing the medical certificate without the patient's consent was contrary to medical ethics and amounted to deficiency in service. The Commission allowed Amrutha's appeal and set aside the District Commission's order. However, it did not award compensation or costs[28]

SELVI V. STATE OF KARNATAKA (2010)

Fact of the case: Several accused persons, suspects and witnesses challenged the use of scientific investigative techniques such as narcoanalysis, polygraph tests (lie detector tests) and Brain Electrical Activation Profile (brain mapping) without their consent. They argued that these methods violated their fundamental rights and forced them to provide information against themselves.

Issue of the case: Whether conducting narcoanalysis, polygraph and brain mapping tests without the consent of individuals violates the right against self-incrimination under Article 20(3) and the right to life and personal liberty under Article 21 of the Indian Constitution.

Judgement:The Supreme Court held that conducting narcoanalysis, polygraph and brain mapping tests without the individual's consent is unconstitutional. It violates Articles 20(3) and 21 of the Constitution. The Court ruled that these tests can be conducted only with the individual's voluntary consent and subject to proper safeguards. It protects an individual's mental privacy, personal liberty and informed consent.[29] It also establishes that medical and scientific techniques must not be forced upon individuals.

JYOTI JEENA V. GOVERNMENT OF NCT OF DELHI (2015)

Fact of the case: Mrs. Jyoti Jeena sought the psychiatric medical records of her husband, Sanjay Singh, from the Institute of Human Behaviour and Allied Sciences (IHBAS). She alleged that her husband and his family had concealed his mental health condition before marriage and that she had suffered physical cruelty because of his illness. The hospital initially refused to provide the records, stating that they were confidential medical information belonging to a third party

Issue of the case: Whether a wife can obtain her husband's confidential psychiatric medical records under the Right to Information Act, 2005, without his consent, and whether disclosure can be permitted in the larger public interest to protect her legal rights and safety.

Judgement:The Central Information Commission held that the larger public interest justified providing Mrs. Jyoti Jeena with relevant medical records of her husband. It directed the hospital to disclose the necessary certified records concerning his illness, its impact and treatment so that she could protect her legal rights. The balance between a

[27] Mr. X v. Hospital Z, (1998) 8 SCC 296; AIR 1999 SC 495

[28] Amrutha v. Dr. Deepa Nair, First Appeal No. A/7/2024

[29] Selvi v. State of Karnataka, (2010) 7 SCC 263; AIR 2010 SC 1974

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patient's right to medical confidentiality and another person's right to obtain necessary medical information to protect their legal interests.[30]

VII. CONCLUSION

Medical confidentiality, privileged communication and professional secrecy are essential principles of medical ethics that protect the privacy, dignity and trust of patients. Every medical professional has a legal and ethical responsibility to keep patients' personal and medical information confidential. These principles encourage patients to share their health problems honestly with doctors and help maintain a strong doctor-patient relationship. However, confidentiality is not absolute, and medical information may be disclosed in exceptional circumstances, such as when required by law, court orders or to protect the life and safety of others. Therefore, medical professionals must maintain a proper balance between patient privacy, professional responsibility and public interest. Ultimately, respecting medical confidentiality, privileged communication and professional secrecy ensures ethical medical practice, protects patient's fundamental rights and strengthens trust in the healthcare system.

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[5]. https://nhrc.nic.in/assets/uploads/speeches/Legal_Ethics_and_medical_profession_07022015.pdf

[30] Ms. Jyoti Jeena v. PIO, Institute of Human Behaviour and Allied Sciences (IHBAS), Case No. CIC/KY/A/2014/001348-SA